

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1625 of 1999

in

SPECIAL CIVIL APPLICATION No 9423 of 1996

with

CIVIL APPLICATION NO. 13639 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR and

MR.JUSTICE D.P. BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHAILALBHAI MATHURBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR YATIN OZA, SR.ADVVOCATE WITH MR CC BHALJA for Appellants
MR MRUGEN K PUROHIT for Respondent No. 1
MR A J PATEL, ADVOCATE, ON CAVEAT FOR RESPONDENT
NO.20.

CORAM : MR.JUSTICE C.K.THAKKAR and
MR.JUSTICE D.P. BUCH

Date of decision: /02/2000

CAV JUDGEMENT

Per Thakker, J.:

This appeal is filed against the judgment and order passed by the learned Single Judge in SCA No.9423 of 1996 on November 5, 1999.

Appellants were the original petitioners. They filed the above petition for quashing and setting aside the order dated April 24, 1995 at Annexure 'D' to the petition by which, the Deputy Collector, respondent No.2 granted permission to respondents Nos. 3 to 8 under Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Tenancy Act') .

The case of the appellants was that land bearing S.No. 282/1 is situated at village Thaltej in Dascroi Taluka. It originally belonged to the petitioners who sold it by a registered sale deed. Proceedings were initiated under Section 84 (c) of the Tenancy Act against respondents. Mamlatdar, Taluka Dascroi , respondent No.19, however, revoked the notice. Against the said order, an appeal was filed which was also dismissed by the Deputy Collector on July 30, 1999. Revision application filed against that order is pending before the Gujarat Revenue Tribunal According to the appellants, during the pendency of revision application, respondent No.2 arbitrarily, unreasonably and without application of mind, passed an order on July 24, 1995 which was clearly illegal. In these circumstances, the appellants-petitioners were constrained to approach this Court by filing the above petition.

Learned Single Judge, after considering rival contentions of the parties, dismissed the petition which is challenged in this LPA.

We have heard at considerable length, Mr. Y.N.Oza, senior advocate appearing for Mr. C.C.Bhalja for the appellants and Mr. A.J.Patel for respondent No.20, on caveat.

Mr. Oza submitted that the order passed by respondent

No.2 was illegal and contrary to law and the learned Single Judge committed an error of law in not allowing the petition and not setting aside the order impugned in SCA. He further submitted that no such order could have been passed particularly when several proceedings were pending either in civil court or before revenue authorities. The learned Single Judge, hence, ought to have kept the petition pending till those proceedings are over. Mr. Oza also made a grievance against the order passed by the learned Single Judge wherein it was observed that the petitioners had no locus standi in view of the fact that they had sold the land as early as in 1990. He submitted that when order passed by respondent No.2 was illegal, it was open to the petitioners to make a grievance before the competent court and they have locus standi to approach this Court for an appropriate writ, direction or order. Mr. Oza also submitted that the learned Single Judge was also not right in observing that equity was in favour of the respondents. So far as respondent No.20 was concerned, he had purchased the land from his predecessors and obviously, he could not get better title than his vendor. If the earlier transaction was contrary to law, obviously, subsequent purchaser also would not get more right and no protection could be claimed. Regarding the decision in Smt.Ratnaprabhabai vs. Tulsidas V Patel, (1982) 23 (2) GLR 213. Mr Oza submitted that the said decision is rendered by learned Single Judge of this Court. In his submission, it does not lay down correct law and requires reconsideration by a Division Bench. On all these grounds, he submitted that LPA deserves admission.

Mr. A.J.Patel for respondent No.20, on the other hand, supported the order passed by the learned Single Judge. He submitted that the petitioners who were the original owners sold the land by a registered sale deed as early as in 1990. It was for an amount of Rs. 2,37,160/-. Sale deed was also registered. No action whatsoever was taken thereafter for sufficient long time by the petitioners. Subsequent sales or purchases after 1990 cannot confer right on the petitioners to approach any court. Learned Single Judge was, therefore, wholly right in holding that the petitioners have no locus standi. He also submitted that respondent No.20 was a bona fide purchaser for value without notice and he cannot be adversely affected in the petition filed by the petitioners who had sold the land before a decade. According to Mr. Patel, if the petitioners had any grievance against their purchasers, it is open to them to take appropriate actions but respondent No.20 cannot be made to suffer. Mr. Patel further submitted that

after purchase of land, respondent No.20 acted to his detriment by spending huge amount and it is not open to the petitioners now to pray to this Court to take action which would adversely affect respondent No.20. Regarding locus standi, he submitted that irrespective of other proceedings in any court and/or tribunal, the petition filed by the petitioners was not maintainable and it has been rightly dismissed on that ground by the learned Single Judge. Moreover, jurisdiction under Article 226 of the Constitution is discretionary and equitable and in the facts and circumstances, it was rightly not exercised by the learned Single Judge in favour of the petitioners. Regarding decision of the learned Single Judge of this Court in Ratnaprabhabai he submitted that the ratio laid down in the said decision has been reiterated from time to time by Single Judges as well as by Division Bench. On all these grounds, he submitted that LPA has no substance and it deserves to be dismissed.

Having considered rival contentions of the parties, in our opinion, it cannot be said that any error of law and/or jurisdiction has been committed by the learned Single Judge. It is not disputed that the petitioners had sold the land before more than a decade. It was for valid consideration. Sale deed was registered. In our view, in these circumstances, the ratio laid down in Ratnaprabhabai would squarely apply. Almost in similar circumstances, a Single Judge of this Court (Coram: S.B.Majmudar, J. as he then was) observed:

" The appellate order of the Assistant Collector shows that the petitioner who was the original vendor had no cause of complaint and could not have preferred any appeal before the Assistant Collector challenging the order of the Mamlatdar refusing to invoke his suo motu powers under Sec.. 84C for invalidating the transaction to which the petitioner was a party being the vendor. It is an admitted position on the record of this case that the petitioner had not initiated any proceedings under sec. 84C. She had not challenged the transaction by which she herself had sold the lands in question years back in 1961 to respondent No.1 having taken Rs 1,00,000/- from it. It was the Mamlatdar who initiated the suo motu proceedings first in 1974 and then in 1980 on the second occasion on the supposition that the said transaction was violative of sec. 84C. If for any reason, the

authority had sought to reinvoke suo motu powers even when there was no occasion for him to exercise such suo motu powers and had therefore subsequently dropped the suo motu proceedings realising the futility thereof, it passes one's comprehension how the party in whose favour such decision is rendered by the Mamlatdar, can approach the appellate authority alleging to be an aggrieved party. By the order of the Mamlatdar, even on the second occasion, the notice issued suo motu calling upon the petitioner to show cause why her transaction with respondent No.1 should not be declared invalid came to be discharged. Result was that the petitioner's sale transaction with respondent No.1 was not declared invalid and it remained untouched. Thereafter, the petitioner could never be said to be a party aggrieved which would be entitled to carry the matter in appeal. It is pertinent to note that the State of Gujarat has not challenged the order of the Mamlatdar by which the Mamlatdar had refused to exercise suo motu powers under section 84C. The State would have been the proper party which could have felt aggrieved if at all by the order of the Mamlatdar. Under the scheme of section 84C (1) and (2), if a transaction pertaining to any agricultural land is found to be invalid and if the parties to the proceedings are not willing to restore status quo ante, the concerned lands would vest in the State Government. Mr. S.R.Shah learned advocate appearing for respondents Nos.1 and 3 made it clear that these respondents are not willing to get status quo ante restored so far as the lands in question are concerned. In such an eventuality, the only order which could have followed would have been the order of the Mamlatdar vesting the lands in the State. Such an order would never have benefited the petitioner in the least. The State which could have got these lands vested in it by any effective exercise of suo motu powers by the Mamlatdar under sec. 84C did not think it proper to challenge his order refusing to take such action. In these circumstances, it is difficult to appreciate how the petitioner original vendor of the lands felt aggrieved by the decision of the Mamlatdar who had refused to set aside petitioner's sale transaction of 1962 in favour of respondent No.1. Assistant Collector, as a court of appeal, was justified when he took the

view that the petitioner's appeal itself before the appellate authority under the Tenancy Act was not maintainable. This is the additional reason why no useful purpose can be served by remanding these proceedings for a fresh decision at the instance of the petitioner. It appears that the petitioner having pocketed Rs. 1,00,000/years back in 1962 is trying to catch at a straw and is practically indulging in the policy of dog in the manger by seeing that the handing sword of the present litigation lingers on so that at some time, respondents Nos.1 and 3 may come round and may give some added financial advantage to the petitioner by way of bargain and if the present proceedings are kept pending, such oblique intention of the petitioner may get fructified. The court obviously cannot be a party to such a design. When the petitioner is not a legally aggrieved party, it is impossible to give her any relief in the present proceedings under Article 227 of the Constitution by resorting these proceedings to the file of the tribunal so that the transaction entered into by the petitioner in favour of respondent No.1 years back in 1962 may once again be brought in the melting pot."

Same principle was reiterated in other cases as well (Vide Bhailalbai Mathubhai Patel vs. State of Gujarat and others, Special civil application No. 9423 of 1996 decided on November 5, 1999; Heirs of Ramabhai A Prajapati vs. State of Gujarat, Special civil application No. 949 of 1995 decided on August 25, 1998 and Legal heirs of Mithabhai Mavjibhai vs. State of Gujarat; LPA No., 1153 of 1998 decided by the Division Bench on September 2, 1999).

In our opinion, learned Single Judge was right in holding that the order cannot be said to be passed mechanically by respondent No.2. After considering relevant factors, permission was granted on certain terms and conditions and the appellants cannot make any grievance against such order.

Learned Single Judge in paras 12, 13 and 14 observed as under :

"12. Shri A.J.Patel, rightly contended that the petitioners on the other hand are guilty of

suppression of material facts, namely that they had accepted huge amount of consideration for executing sale deed in favour of the respondents Nos.3 and 4 and the said amount of consideration has not so far been disclosed. Shri J.C.Vyas contended that execution of sale deed in favour of respondents Nos.3 and 4 is admitted by the petitioners, hence there is no concealment. However, in the writ petition the amount of consideration of sale deed is not disclosed. This suppression regarding the amount of sale consideration may not be very vital, but still it reflects upon bona fide conduct of the petitioners.

13. It may also be mentioned that the position of the respondents Nos. 8 to 18 and 20 has been altered since then inasmuch as they raised major portion of the construction acting upon the permission granted under section 63 of the Act after the sale deed was executed in their favour. It will then be unjust and inequitable to stop further construction and hold that the permission under sec. 63 is invalid. The order to maintain status quo passed in this petition on 8.2.11.1996 in these circumstances, is required to be vacated inasmuch as the sale deed in favour of the respondents Nos,8 to 18 and 20 is prima facie value and requisite permission was obtained by the respondent Nos.3 and 4 under sec. 63 of the Bombay Tenancy Act before executing the sale deed in favour of the respondents Nos.9 to 18. The order to maintain status quo passed by the Gujarat Revenue Tribunal cannot invalidate the permission granted by the respondent No.2 under sec. 63 of the Act.

14. To sum up therefore, it can be said that the petitioners after having sold the property to the respondents Nos.3 and 4 for a valuable consideration through registered sale deed have lost their right and interest in the land. As a consequence thereof, they have also lost their right to challenge the permission granted to the respondents Nos. 3 and 4 by the respondent No.2. Further, on merits, the petitioners are guilty of concealment of material fact, namely consideration for which they had executed the sale deed in favour of the respondents Nos. 3 and 4 and lastly on merits also, the impugned order of the respondent No.2 is neither illegal

nor contrary to law. Consequently, I do not find any merit in this petition which is liable to be dismissed."

We are in agreement with the reasons recorded and conclusions arrived at by the learned Single Judge . We find no legal infirmity in the approach of the learned Single Judge. On the contrary, we are of the view that by taking the above view, the learned Single Judge has acted in accordance with law as also various decisions of this Court. We, therefore, see no substance in the LPA which deserves to be dismissed and is accordingly dismissed. No order as to costs. No order on civil application.

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parekh